### *Search Warrants . . . validity*

*Aguilar* v. *Texas*, 378 U. S. 109, 12 L. ed. 2d 723, 84 S. Ct. 1509, 32 Law Week 4499. (No. 548, decided June 15, 1964.) *On writ of certiorari to the Court of Criminal Appeals of Texas. Reversed and remanded.*

This decision overturned petitioner's conviction of illegal possession of narcotics on the ground that no probable cause was shown for the issuance of the search warrant involved in his arrest.

The warrant was obtained by two members of the Houston police force on the strength of an affidavit that they had "reliable information from a credible person and do believe that heroin . . . and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law". When the officers went to execute the warrant, they announced that they were police with a warrant and heard a commotion in the house. They forced their way in and seized the petitioner in the act of attempting to dispose of a packet of narcotics. At the trial, petitioner objected unsuccessfully to the introduction of the evidence obtained as a result of the execution of the warrant. He was convicted and sentenced to twenty years for illegal possession of narcotics, and the Texas Court of Criminal Appeals affirmed.

Speaking through Mr. Justice Goldberg, the Supreme Court reversed and remanded. The Court noted that *Ker* v. *California*, 374 U. S. 23 (1963), had held that the Fourth "Amendment's proscriptions are enforced against the States through the Fourteenth Amendment" and that "the standard of reasonableness is the same" under both amendments.

The purpose of requiring a search warrant, the Court went on, is to substitute the "informed and deliberate determinations of magistrates" for "the hurried action of officers" in determining probable cause for the issuance. A reviewing court must insist that the magistrate perform his "neutral and detached" function and not serve merely as a rubber stamp for the police, the Court said. The difficulty here was that the affidavit merely stated suspicion and belief without any statement of adequate supporting facts: the "mere conclusion" that petitioner possessed narcotics was not even that of the affiant, the Court pointed out, but was that of an unidentified informant, and there was no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein. While an affidavit may be based on hearsay, the Court added, the magistrate must be informed of some of the underlying circumstances from which the informant reached his conclusions and some of the circumstances which led the officer to believe that the informant was "credible" or that his information was reliable.

Mr. Justice Harlan, concurring, noted that but for *Ker* v. *California*, he would have voted to affirm.

Mr. Justice Clark, joined by Mr. Justice Black and Mr. Justice Stewart, wrote the dissenting opinion which argued that neither of the cases relied on by the Court was in point and that courts of appeals have often approved affidavits similar to the one at issue here. The dissent declared that the Court had substituted "a rigid, academic formula for the unrigid standards of reasonableness and 'probable cause' laid down by the Fourth Amendment itself . . .".

The case was argued by Clyde W. Woody for petitioner and by Carl E. F. Dally for respondent.